

FINDINGS OF FACT:

1. The taxpayer sells car wash equipment and supplies and had a small, 12-foot truck that it used to deliver supplies in Illinois. (Tr. p. 9)

2. In 1999 the taxpayer acquired a larger truck and on October 20, 1999, the taxpayer drove this truck for the first time in Illinois without first obtaining a motor fuel use tax license. (Tr. pp. 9-10).

3. When the taxpayer entered Illinois, he stopped to have the vehicle weighed at a weigh station. At the station he was told that he did not have the proper registration. The taxpayer admitted that he did not have a valid license for the vehicle on October 20, 1999. (Tr. pp. 9-10).

4. On April 7, 2000, the Department issued NTL number 00-000000-0 to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on October 20, 1999. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #2).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

¹ At the hearing the Department raised the issue of whether the protest was timely filed. Because the taxpayer's arguments concerning the license are not meritorious, this issue will not be addressed.

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds ***, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds ***, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ****" (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer admitted that he did not have a license for the vehicle on the day in question, but he argues that he immediately corrected his error by acquiring a license within two days of the violation. He also stated that no one at the license bureau or the weigh stations had informed him that he would need the license.

The taxpayer believes that the penalty is too harsh under these circumstances and should be waived.

Unfortunately, the Act simply provides that no motor carrier shall operate without first securing a license from the Department. Nothing in the Act allows for an abatement of the penalty if a party fails to first obtain the license before operating the vehicle. Although the taxpayer may have been unaware of the requirement and corrected the error as soon as possible, the fact remains that he was in violation of the law on the day in question. It must therefore be recommended that the Notice of Tax Liability be affirmed in its entirety.

Linda Olivero
Administrative Law Judge

Enter: January 17, 2001